IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 41 of 2003
with
Civil Application No.845 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHIBEN BHAGWANBHAI

Versus

JETHNAND JAMNADAS

Appearance:
MR DEVANG LATHIGARA for the appellant.
MR JF MEHTA for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/02/2003

ORAL JUDGEMENT

Mr.Lathigara, learned Advocate for the appellant, seeks leave to delete respondents 2 to 5.

Appeal is admitted.

With the consent of the parties, the matter is taken up for final hearing today.

The appellant herein is the original defendant No.2, against whom as well as against other defendants, respondent No.1 herein has filed a suit, being Civil Suit No.1774 of 1998. The case of the plaintiff is that the plaintiff is occupying the shop, being Shop No.620/1, as a tenant of the defendants and that the defendants are trying to construct a latrine / toilet at a place near the rented shop of the plaintiff and if such construction is allowed to be put up, it will create difficulties to the plaintiff in passing and re-passing for the purpose of approaching the rented shop.

In the said suit, the trial court had granted ad interim injunction. Thereafter, the present plaintiff gave an application at Exhibit 33 under Order 39 Rule 2A of the Code of Civil Procedure. It is the case of the plaintiff that in spite of the injunction order, the defendants have constructed a latrine in violation of the injunction order and, therefore, appropriate punishment should be awarded to the defendants.

The trial court, thereafter, by its order dated 22.1.2003, directed the defendant No.2 (the present appellant herein) to remove the illegal construction put up by her. The trial court also passed an order for detaining defendant No.2 in civil prison for a period of three months and the said order is under challenge at the instance of the original defendant No.2.

Mr.Lathigara, learned Advocate who is appearing for defendant No.2, Dahiben Bhagwanbhai, submitted that the appellant is a widow, aged about 65 years. He submitted that there was no intention to commit breach of the Court's order and some construction was carried out because of certain pressing circumstances. However, he submitted that there was no intention to commit breach of the injunction order. At the time of issuance of notice in this Appeal from Order, it was pointed out by Mr.Lathigara that the objectionable construction is already removed.

At the time of hearing of this Appeal from Order, Mr.Mehta, who is appearing for the respondent No.1-original plaintiff, fairly states that the construction carried out by the defendant No.2 is already removed and now, she has complied with the order of the

trial court. Even at the time when the notice was issued by this Court, the appellant was present before the Court and she had also tendered unconditional apology. Now, the offending construction is already removed and the appellant herein has tendered her apology. Mr.Lathigara, learned Advocate for the appellant, submitted that the appellant is an elderly widow. Mr.Mehta, learned Advocate for the plaintiff, has also fairly conceded that he has no objection if the order of imprisonment is set aside.

Considering the facts and circumstances of the case and considering the fact that the offending construction is removed and that the defendant No.2 has tendered her apology, it would be just and proper and it would be in the interest of justice to set aside the order of imprisonment recorded by the trial Judge.

Considering the aforesaid aspect of the matter, this appeal is partly allowed to the aforesaid extent. The order passed by the learned Chamber Judge, City Civil Court, Ahmedabad, below Exhibit 33 is set aside in so far as the trial Judge has ordered civil imprisonment against the present appellant.

If the respondent has deposited any amount before the trial court towards subsistence allowance, the respondent will be entitled to withdraw the said amount from the trial court.

In view of the above order passed in the Appeal from Order, Civil Applicaiton No.845 of 2003 has become infructuous and it is disposed of accordingly. Ad interim relief is vacated.

18th February, 2003 (P.B. Majmudar, J.)

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(apj)